

State of Washington  
DRAFT  
REPORT OF EXAMINATION  
FOR WATER RIGHT APPLICATION

PRIORITY DATE  
DECEMBER 1, 2005

WATER RIGHT NUMBER  
S3-30502

MAILING ADDRESS  
JAMES J. MARTHALLER  
731 BEAR PAW DRIVE  
NEWPORT, WA 99156

SITE ADDRESS (IF DIFFERENT)

Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.045	CFS	5.74

Purpose

PURPOSE	DIVERSION RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Irrigation	0.045	---	CFS	5.74	---	MAY 1 – Sept 30

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS
2	---	N/A	N/A

Source Limitations

SOURCE FACILITY/DEVICE	DIVERSION RATE	ANNUAL QUANTITY (AF/YR)	PERIOD OF USE (mm/dd)
PEND OREILLE RIVER	0.045 CFS	5.74	MAY 1 – Sept 30

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
PEND OREILLE	PEND OREILLE RIVER	COLUMBIA RIVER	62-PEND OREILLE

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ	LATITUDE	LONGITUDE
PEND OREILLE RIVER	443235560002 Lot 2, Schulz Division	32N	44E	35	NE¼NW¼	48.23699°N	117.21224°W

Datum: NAD83/WGS84

REPORT OF EXAMINATION

**Place of Use (See Attached Map)****PARCELS (NOT LISTED FOR SERVICE AREAS)**

443235560002

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

Lot 2 of Schulz Division, Short Plat Book 2, page 44, records of the Auditor of Pend Oreille County, WA. Together with an easement over the East 30 feet of the West half of Section 26, Township 32 North, Range 44 EWM lying South of LeClerc Road. Also together with an easement 60 feet wide over the East 60 of the South 1650 feet of the West half of Section 26, Township 32 North, Range 44 EWM.

**Proposed Works**

submersible pump, irrigation system

**Development Schedule****BEGIN PROJECT**

November 1, 2013

**COMPLETE PROJECT**

November 1, 2014

**PUT WATER TO FULL USE**

November 1, 2015

**Measurement of Water Use**

How often must water use be measured?

Weekly

How often must data be reported to Ecology?

Upon Request by Ecology

What volume should be reported?

Total Annual Volume

What rate should be reported?

Annual Peak Rate of Withdrawal (gpm or cfs)

**Provisions****Pend Oreille River Low Flow**

All irrigation shall cease when the flow of the Pend Oreille River falls below 7700 cubic feet per second at U.S. Geological Survey (U.S.G.S.) gage #12395500, Pend Oreille River at Newport, located within Section 24, Township 56 N., Range 6 W.B.M.

**Measurements, Monitoring, Metering and Reporting**

An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173.

WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

**Department of Fish and Wildlife Requirement(s)**

The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. <http://wdfw.wa.gov/about/contact/>

**Water Use Efficiency**

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

**Proof of Appropriation**

The water right holder shall file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the permit. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

**Schedule and Inspections**

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

**Findings of Facts**

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. S3-30502, subject to existing rights and the provisions specified above.

**Your Right To Appeal**

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW Ste 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this       day of       2012.

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Keith L. Stoffel, Section Manager

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.



INVESTIGATOR'S REPORT  
 Application for Water Right -- Marthaller  
 Water Right Control Number S3-30502  
 Gene Drury, Department of Ecology

## BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S3-30502.

<b>Applicant Name:</b>	James J. Marthaller
<b>Date of Application:</b>	December 1, 2005
<b>Place of Use</b>	Lot 2 of Schulz Division, Short Plat Book 2, page 44, records of the Auditor of Pend Oreille County, WA. Together with an easement over the East 30 feet of the West half of Section 26, Township 32 North, Range 44 EWM lying South of LeClerc Road. Also together with an easement 60 feet wide over the East 60 of the South 1650 feet of the West half of Section 26, Township 32 North, Range 44 EWM.

<b>County</b>	<b>Waterbody</b>	<b>Tributary To</b>	<b>WRIA</b>
Pend Oreille	Pend Oreille River	Columbia River	62-Pend Oreille

<b>Purpose</b>	<b>Rate</b>	<b>Unit</b>	<b>Ac-ft/yr</b>	<b>Begin Season</b>	<b>End Season</b>
Irrigation	0.045	GPM	5.74	May 1	Sept. 30

<b>Source Name</b>	<b>Parcel</b>	<b>Twp</b>	<b>Rng</b>	<b>Sec</b>	<b>QQ Q</b>	<b>Latitude</b>	<b>Longitude</b>
Pend Oreille River	443235560002	32N	44E	35	NE $\frac{1}{4}$ NW $\frac{1}{4}$	48.23699°N	117.21224°W
	Lot 2, Schulz Division						

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section;  
 WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum: WGS84.

### Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Newport Miner on March 29 and April 5, 2006. Due to an error in the in the legal description, an amended notice was published on September 12 and 19, 2012. No protests were received.

### State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- It is a groundwater right application for more than 2,250 gallons per minute;

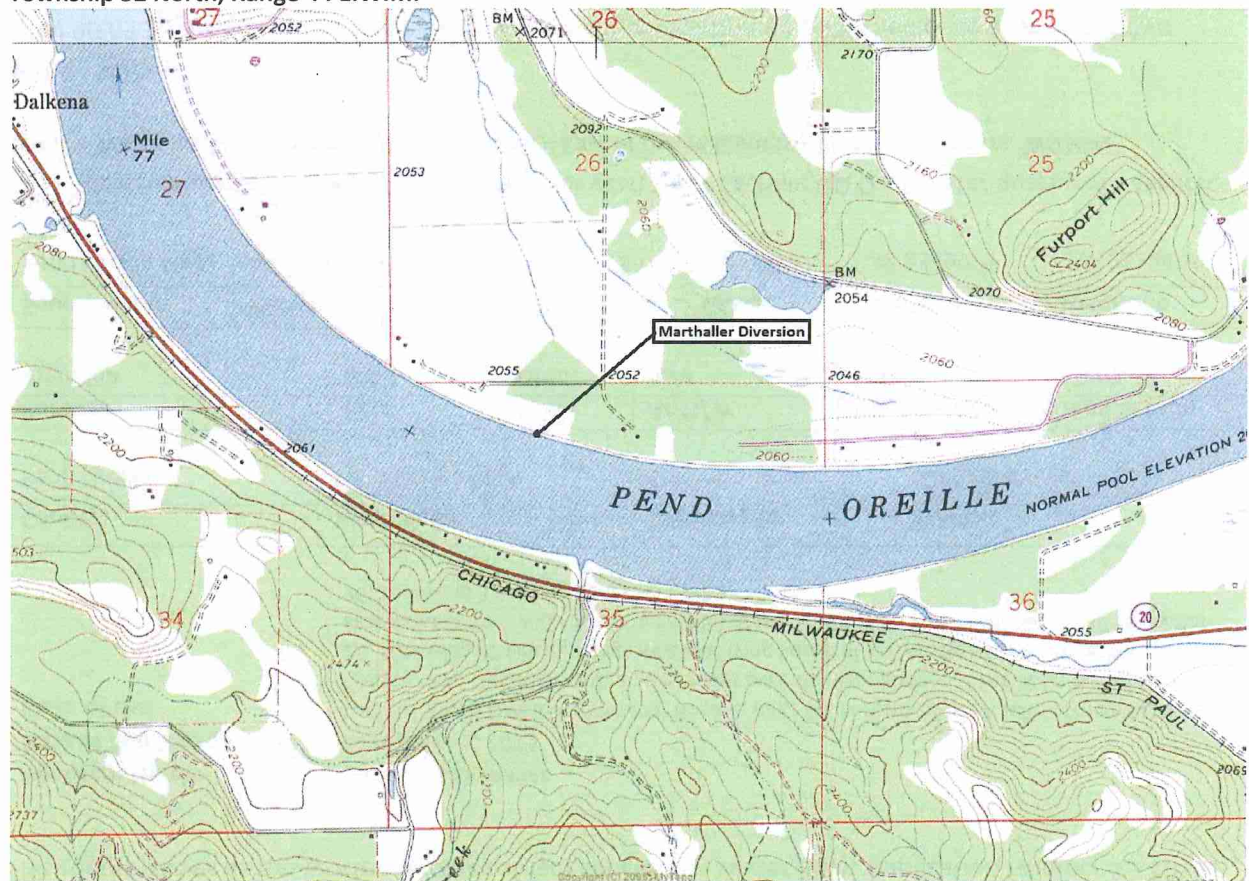
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

## INVESTIGATION

A site visit was conducted by Gene Drury with James Marthaller on August 22, 2012. The proposed project is located approximately 9 miles north of Newport, WA off LeClerc Creek County Road on the east side of the Pend Oreille River.

Township 32 North, Range 44 E.W.M.



USGS 7.5 Minute (Topographic Map) - "Diamond Lake"

The proposed place of use is a 3 acre lot located on Lot 2 of Schulz Division within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 35, T. 32 N., R. 44 E.W.M. The applicant proposes to divert water from the Pend Oreille River using



a submersible pump on the existing dock. Originally, plans were to divert up to 0.22 cubic feet per second to irrigate three acres and use water for domestic supply of two homes. After discussion with the applicant, only two acres of land will be irrigated from the river. No water is needed for domestic supply as a well provides this water to the existing home.

The applicant proposes only to irrigate about two acres of lawn, which may include a small garden. The Washington State Irrigation Guide (WA210-Vi-WAIG, AMEND.1NOVEMBER1990 at Newport, Washington) estimates that this would require 34.44 inches or 2.87 acre-feet per acre (based on 70% system efficiency). Therefore, 0.045 cubic foot per second (20 gpm) and 5.74 acre feet will be adequate for irrigation under this permit.

### **Beneficial Use**

Irrigation is a beneficial use of water.

### **Water Availability**

An analysis of water availability must take into account not only the physical limitations on the source of supply, but the legal availability as well.

Hydrogeologic Analysis: The Department of Ecology has not closed the Pend Oreille River to further consumptive appropriations, however all diversions shall cease when the flow of the Pend Oreille River falls below 7700 cfs at U.S. Geological Survey (U.S.G.S.) gage #12395500. This low-flow is a recommendation from the Washington State Department of Fish and Wildlife (WDFW) and applies to surface and ground water in hydraulic continuity with the Pend Oreille River since October 18, 1999.

Therefore, water is available for appropriation as long as irrigation ceases when the Pend Oreille River falls below the low flow recommendation from the Washington State Department of Fish and Wildlife.

### **Impairment Considerations**

A review of Ecology records was conducted for existing water rights, permits, and claims in the vicinity of the proposed point of diversion within the NW¼ of Section 35, T. 32 N., R. 44 E.W.M. There were three claims found to be recorded in this area all under the name Calvin Schulz. They were all filed on short form claims under the Claims Registration Act, Chapter 90.14 RCW and appear to be for small water use for domestic, stockwatering and less than ½ acre of lawn and garden. They are recorded under Ground Water Claim #052636 and Surface Water Claims #052635 and #052637. The extent and validity of these claims were not investigated, however, they are not related to the Marthaller proposed water use.

The intent of the Claims Registration Act, Chapter 90.14 RCW, was to document those uses of surface water in existence prior to the adoption of the State Surface Water Code, Chapter 90.03 RCW, which was adopted in 1917, and those uses of ground water in existence prior to the adoption of the State Ground Water Code, Chapter 90.44 RCW, which was adopted in 1945. Since each code(s) adoption, the only means of acquiring a water right within the state is by filing for, and receiving, a permit from the Department of Ecology or one of its predecessors or by establishing a right under the "domestic exemption" under the ground water code (RCW 90.44.050). The Department of Ecology recognizes that the final determination of the validity and extent associated with a claim registered in accordance with RCW 90.14 ultimately lies with the Superior Court through the general adjudication process provided for by Sections 90.03.110 through 90.03.240 RCW.

## **Public Interest Considerations**

There has been no public expression of protest or concern regarding the subject proposal, and no findings through this investigation indicate that there would be any detrimental impact to the public welfare through issuance of the proposed appropriation.

Chapter 90.54 RCW provides that water allocation shall secure maximum net benefits to the people of the state, while also requiring that perennial rivers of the state shall be retained with base flows necessary to provide for the preservation of fish and other environmental values. To maintain these values the irrigation authorization shall be subject to the minimum instream flow of 7700 cfs as measured at U.S.G.S. gage #12395500 near Newport set by WDFW on October 18, 1999.

The approval of this application for this quantity and use will not be detrimental to the public interest.

## **Conclusions**

Under Chapter 90.03.290 RCW, an application for permit may be approved if water is available for appropriation, and the proposed use would be a beneficial use, would not impair existing water rights, and would not be detrimental to the public welfare.

It is the conclusion of this examiner that public surface water, from the Pend Oreille River, is available for the seasonal irrigation of 2 acres. This appropriation is considered a beneficial use and will not impair existing water rights or be detrimental to the public welfare.

## **RECOMMENDATIONS**

Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above

## **Purpose of Use and Authorized Quantities**

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

0.045 cubic foot per second (20 gallons per minute); 5.74 acre-feet per year for the seasonal irrigation of 2 acres.

Point of Diversion and Place of Use:

Lot 2 of Schulz Division within the NE¼NW¼, Section 35, Township 32 North, Range 44 E.W.M.

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*Gene Drury, Report Writer*

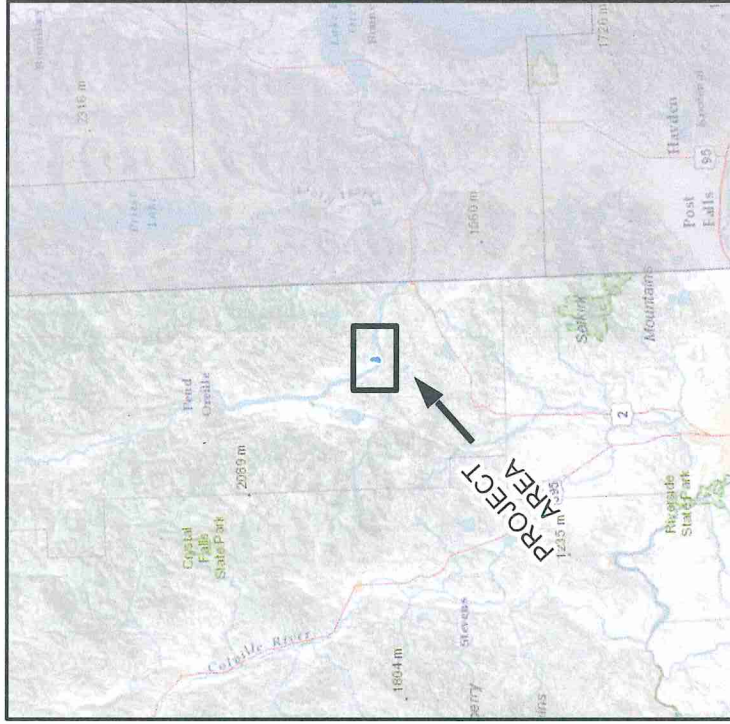
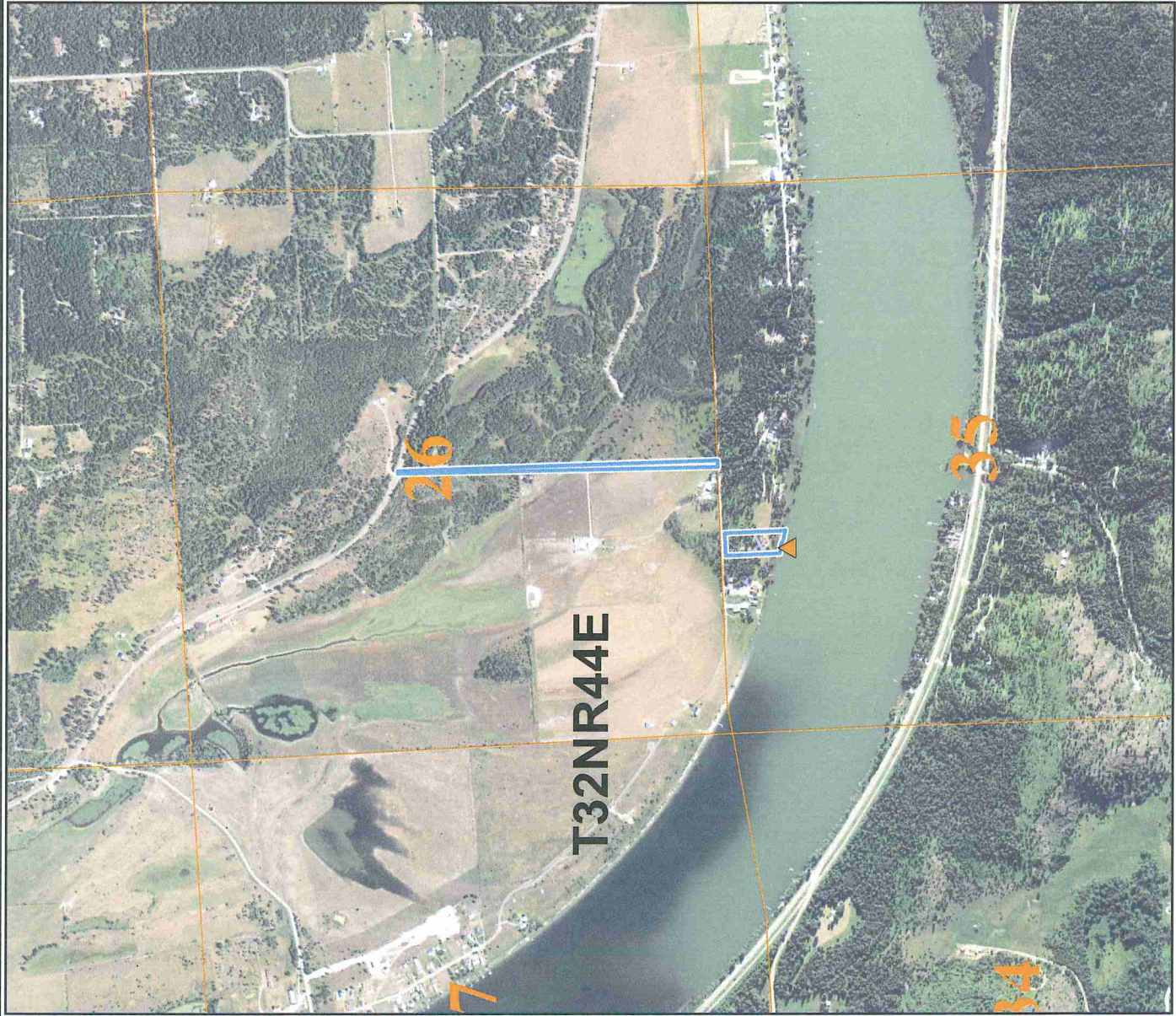
*Date*

*If you need this publication in an alternate format, please call the Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.*



# ATTACHMENT 1

James J. Marthaller  
S3-30502  
T32N/R44E



Basemap - (ESRI US Topographic Maps)

## Legend

-  Authorized Place of Use
-  Townships
-  Sections
-  Authorized Point of Diversion

## Comment:

Place of use and source locations are as defined within the Report of Examination cover sheet for the document identified in the header above.

0 700 1,400 2,800 4,200 5,600 Feet



Basemap - (NAIP 2011 1m color)



Map Date: 10/4/2012